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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA and THE PEOPLE OF THE STATE OF CALIFORNIA, ) Case No. 3:18-cv-07591-CRB  
Acting by and through San Francisco City Attorney DAVID CHIU, ) JOINT STATEMENT REGARDING RECORDING TRIAL  
Plaintiffs, )  
vs. )  
PURDUE PHARMA L.P., et al., )  
Defendants. )

1                   On February 1, 2022 the Court issued an Order Re: Trial Protocols and Deadlines. Dkt.  
2 No. 1004. The Court ordered the parties to submit a follow-up joint statement regarding  
3 livestreaming the proceedings. The parties agree on all issues except recording the content  
4 transmitted via the livestream. They hereby submit this joint statement on that issue. Each side's  
5 proposed language (should they prevail) is included as an option for the Court to select in the  
6 contemporaneously filed stipulation and order.  
7

8 **I. PLAINTIFF'S PROPOSAL**

9                   The Court should be able to, on a case by case basis, after considering the individual  
10 circumstances of a witness at issue, authorize the livestream vendor to record a witness's testimony  
11 for potential use in other proceedings. Cases are transferred to multidistrict litigation "for the  
12 convenience of parties and witnesses and [to] promote the just and efficient conduct of such  
13 actions." 28 U.S.C. § 1407. These principals are particularly important in bellwether proceedings,  
14 which serve to guide resolution of disputes across an MDL. Recording portions of the CT4 trial can  
15 facilitate these objectives where witness availability is an issue, and particularly where it disparately  
16 impacts one party. Plaintiff's proposal keeps the recording confidential and sequestered—unless  
17 and until another judge admits it. The balance of hardships favors this approach. A decision not to  
18 record has permanent effect, fully foreclosing any opportunity to view CT4 testimony in any other  
19 proceeding. But creating a recording has no cost, since cameras will already be present for  
20 livestreaming, and causes no harm of any kind. Defendants' concerns arise only once a recording  
21 is used in particular (hypothetical) settings. Where those concerns are valid, judges overseeing  
22 other proceedings will not admit the recordings. Some judges may see benefit in using the recording  
23 for only one witness in an extraordinary circumstance, or never at all. But where its use could  
24 someday benefit the administration of justice, it can only be helpful to make that option available  
25 to judges in the many upcoming and future opioid proceedings.  
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## II. DEFENDANTS' PROPOSAL

Defendants oppose the People’s request to “authorize the livestream vendor to record a witness’s testimony for potential use in other proceeding.” Under Civil Local Rule 77-3, “video-recording in the courtroom or its environs in connection with any judicial proceeding is prohibited” unless authorized by the District Judge “for ceremonial purposes, or for participation in a pilot or other project authorized by the Judicial Council of the Ninth Circuit or the Judicial Conference of the United States.” The People have not pointed to any ceremonial purpose or any authorized pilot or other project that necessitates such a recording over Defendants’ objection. Recording “for potential use in other proceedings,” even if considered on a case by case basis, is not permitted under Civil Local Rule 77-3. *See Hollingsworth v. Perry*, 558 U.S. 183, 192 (2010) (staying broadcasting where Civil Local Rule 77-3 did not permit it and the district court’s attempt to amend the rule was not valid). That this is an MDL bellwether trial does not justify a deviation from the local rules. *See id.* at 199 (rejecting the court’s attempt “to treat this case differently from other trials in the district”).

Moreover, the People’s intent to play the recorded witness examinations at subsequent trials goes against the Federal Rules’ requirement that “witnesses’ testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise.” Fed. R. Civ. P. 43(a). The People have not attempted to justify the use of any witness’s trial testimony in any future trial in which the People would not be a participant and there is no guarantee that the same defendants would be involved. Likewise, the People have not explained why any particular witness would be unavailable to testify live in a subsequent trial. Nor have the People explained why the transcript of a witness’s trial testimony would fail to adequately preserve that witness’s testimony for any future cases.

Defendants urge this Court to adopt their proposal regarding recording, which mirrors that used in the livestream orders entered in prior case tracks—also bellwethers.. *See, e.g., In re Nat'l Prescription Opiate Litig.*, 17-md-2804, Dkt. 3951 (“Recordings of any kind, including audio recordings, visual recordings and still photographs of court proceedings are strictly prohibited.”).

1  
2 DATED: February 18, 2022  
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4 Respectfully Submitted,  
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1 **ATTESTATION**

2 Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that concurrence in the filing of this  
3 document has been obtained from the above signatories.

4

5 DATED: February 18, 2022

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**CERTIFICATE OF SERVICE**

2 I hereby certify under penalty of perjury that on February 18, 2022, I authorized the  
3 electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will  
4 send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List,  
5 and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service  
6 to the non-CM/ECF participants indicated on the attached Manual Notice List.

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